Supreme Court, U.S.
FILED

(1)

001367 JAN 24 2000

NO:

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QUESTIONS PRESENTED.

THE QUESTIONS PRESENTED AS STATED EARLIER IS THE SAME BUT MOTION FOR REHEARING FILED FEB.5,PREVIOUSLY ANNEXED TO 98-30-99;NOW.98-98-9566. FILED ON JUNE 99.DENIED ON DEC,17/99.

ADDITIONAL QUESTIONS PRESENTED.

[A] WHETHER THE DISTRICT COURT JUDGE UNSERVED ORDER DENYING PLAINTIFF'S MOTION FOR JURY TRIAL AFTER DEPOSITION VIOLATES,ART.III,OF U.S.CONST. & DUE PROCESS AND IS THEREFORE UNCONSTITUTIONAL.

[B] WHETHER THE USCA.ISSUED "SUMMARY ORDER" FAILED,DISQUALIFY JUDGE BLOCK VIOLATES SUBSTANTIAL DUE PROCESS RIGHT TO BE HEARD,UNDER THE U,S. CONST.AMEND I; VII; & XIV IS THEREFORE UNCONSTITUTIONAL.

[C]. WHETHER FAILURE OF JUDGE BLOCK TO DISQUALIFY HIMSELF FROM PLAINTIFF(S)' CASE AND USCA. RELUNCTANT TO DISQUALIFY THE JUDGE PURSUANT TO 28 USC.§144,AND § 455(a), VIOLATES DUE PROCESS CLAUSE AND IS THEREFORE UNCONSTITUTIONAL.

[D]. WHETHER THE RIGHT TO SUE LETTER FROM E.E.O.C.IS JURISDICTIONAL ON THE U.S.DISTRICT COURT ON TITLE VII CASES, AND SUCH DENIAL OF JURY TRIAL VIOLATES SUBSTANTIAL DUE PROCESS RIGHT TO BE HEARD AND THERE-TO-FORE UNCONSTITUTIONAL.

[E] WHETHER THE CONSPIRACY UNDER KLU KLUS CLAN ACT,PROSCRIBED UNDER U.S.CONST.AMEND, XIII;AND STATUTE 42 U.S.C.§ 1985(3) IS INSUBSTATIAL AND RENDER THE JUDGEMENT OF UNSERVED ORDER OF JUDGE BLOCK VOID.

(i) THE NAME OF THE PARTY TO THIS ACTION IS IN THE TITLE PAGE AS ABOVE AND WILL NOT BE RECITED HEREIN.

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CONCLUSSION . . . . . .30.

ANSWER TO QUESTION PRESENTED.

The Civil Right Act of 1866, 1871,1964 and 1991,are not insubstantial.Under which United States Constitution Amend.One,Fifth, Sixth, Seventh. Thirteenth,which prohibit Conspiracy to deprive, anyone of Liberty,or Property;before Fourteenth, Amend. was enacted to United States Constitution.

THE UNITED STATES STATUTES INVOLVED HEREIN.

The 42 USC. § 1985(3);[KU KLUX CLAN ACT.is Constitutional by U.S.Supreme Court.];§1983, § 1981; Section 812,Civil Rights Act of 1968,82 Stat,88,42 USC.§3612, Title VIII, the fair Housing provision of the Act,and provides that "the court may grant as relief as it deems appropriate, any parmanent or temporary injuction. 28 USC.§ 1343(3).

"The Question In this case,and other plaintiffs cases": is whether the "Civil Right Act"or Seventh Amendment requires a jury trial upon demand by one of the parties in action for damages and injuctive relief under this section.

The Answer is yes,as we demanded "JURY TRIAL" in this case and all our civil Rights cases.

The same the USCA. Cir.(7), Seventh Court of Appeals, did said yes in "Rogers V.Loether,467 F.2d 1110; Reversing, Rogers v, Loether,312 F.Supp.1008 (ED.WIS.1970. After trial on the merits.

The U.S.Supreme Court said yes,on; 412 U.S.937 (1973). We affirm.

v.

Index to Apendix A 1,where the defendant NYC.Transit Authority is charged, for falsify shortage,when their Assistant Supervisor Ms, Graige, was called to audit the Booth [B4] in Flatbush Station on June 19,'82. After such audit she found the booth was over by $ 2.50. which she bagged it and asked me to drop it into safe deposit Vault, which she witness and signed the drop sheet; and she called station Field Office and said I am a foreigner.

The defendant account Department found that that amount droped and counted by their asst.supervisor was shotage of $ 6.50. Upon which I charged the defendant for discrimination, demanded $ 100,000.00; for compensatory damage; and the same amount for punitive damage.*1 As In APPD.A1. as the first Cause of Action.As A.1

FOR THE SECOND CAUSE OF ACTION:For Conspiracy, proven with the M.T.A.Higher,upfalsification pursuant to Thirteent Amend.U.S.Constitution,Under 42 USC.§ 1385(3):1981 as a legal permanent Alien.For which I,charge.M.T.A.For $ 100,000,00 for Compensatory damage,and the same amount for punitne *2. As APPD.A2.

THE THIRD CAUSE OF ACTION: Was based in,part upon the M.T.A.Conspiracy; especially when one of their Revenue Collector,(black man), that they sponsored started falsely destroying my revenue bags and isueing,bag not sealed violation.I caught him on my,last day at West 4th St. station; as he twisted the thread that was used to close the bags. As I,was looking at him in that precess, and snap the seal. as he proceed to write his Violation, For falsified Violations.

v4continue

I then challenged him.For which I petition M.T.A. with his Badge,# 700025. to vacate such five cautions;See,p.5 of my suit. In my "G.2."ask them to void those cautions; but being that he was their agent/co-conspirator they let the others he had written stand,for which I charged the M.T.A. $ 100,000.00, for compensatory damage; the same amount for punitive damage* 3.A.P.3

FOR THE FOURTH CAUSE OF ACTION: SS P.5./8.

On November 19,'82,I relieved a P.M.Clerk, Navaja,I came at 11.40;rather than 11,45,pm. as the required time, the record showed,that he Navaje opened unusual number of token bags (7),seven. In which it took at least,3, minutes to run/count each bag in the machine In essence,I,had to check the board,as well as the tokens,he had on the board,plus the fact I had to pull the wheel; i.e.I,had to go to the turnstiles and retrieve the tokens since he last pull his wheels, so ans to recosile the deferences.

Records equally showed that I finished checking him out at 12.02.A.M.rather than 12.00 A.M. If it takes 3,minutes for each bags that Navaja opened; 3 x 7= 21 minutes. However I was able to get the job done,in 22 minutes,at 12.02 A.M.

But he was on the telephone, unable to,get through, then he pull the alarm system to reach the station.see p.6/7 of my charges and administrative law judge of NYS. DEPT.

IN WHICH AS TO FOURTH CAUSE OF ACTION:FOR WHICH THE M.T.A.WAS CHARGE FOR: $ 100,000,00 for compensatory dmages and the same amount for punitive damages**4. A.PPD.4.

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*1,2,3,and 4; Unless the defendant,M.T.A. do all that I,had demanded in the above,suit and pay my salary as stated in this suit. I could demand thriple punitive

damages,during jury trial."

vii.

Should the U.S.Supreme Court Grant Certiorari and remant the case to jury trial as the law and constution demand.

I would demand tripple punitive damages; as cited the Court on Glus V.BROOKLYN Eastern District Terminal,as cited on p.29/30 of this writ.359 U.S.232.

All of the exhibits,in APPD.1 to 4, will be fowarded TO THIS Court Pursuant to Rules 26.1,2,& 32.1. of The Court.

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U.S.Supreme Court on Title VII, ON June,12, 2000, Unanimously held;a plaintiff,can prevail, even in the absence of "smooking gun evedence,of discrimination";un-published, pursuant to Rule 14.1(d) of this Court,P,23.
[Even,aftethe defendant Ms.Jonas,file,her answer to this writ Plaintiff,will annex, further 'similar criminal,cases that we cited at p.23,during deposition;that,keep occouring, on Sunday, June 25 ,when NYC. Police arrested some fare-beaters on subways published on Daily News of the date cited herein.]
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_____.

A.P.1.

UNITED STATES DISTRICT COURT X
EASTERN DISTRICT OF NEW YORK X
CV.93-5600.

SYLVESTER O. ABIDEKUN,
VS.
NYC. TRANSIT AUTHORITY

Re:WITHDRAWAL OF MR. Rohan Harrison,as Counsel's Motion of 6/5/97.

On the 11th day of April 1997 we exchange information on the proposed summary judgement of the defendant's NYC.Transit Authority attorney;which by law I am responsible to respond to within two weeks.Upon further telephone contact, Mr. R.Harrison, informed me to come to his office on the 25th.day of April to get a copy of the defendant's summary judgement motion. At that time we discussed how to proceed on reply to the defendant's motion;and agreed to submitting my response motion to Mr. Harrison,and for him to add to my motion if need be on his research or to make attorney authorization,and affidavit to my motion.

On May 2nd. 1997, I presented my Response Motion to defendant Summary judgement motion and for the presiding judge;and for his RECUSAL PURSUANT TO 28 U.S.C.§144, but Mr. Harrison said that,he could not submit such motion,that he feared of being sactioned by judge Block; and that I can do it because I don't have any licence that judge Block can go after.

As a matter of law, 28 U.S.C.§ 144 never mention that an attorney should file such motion for"RECUSAL OF A PREJUDICIAL JUDGE".

To cite few examples,in addition to my recusal petition dated on 5/2/97;but was filed with Clerk on 5/9/97.[I]Denial of motion for recusal was solely based upon the fact that plaintiff's attorney was the signatory and not the actual plaintiff/party that was prejudiced,that accompanied the motion. Roberts v.Bailar,C.A.6, (Tenn.) 1980,625 F.2d.125,on remand 538 F.Supp. 424.

A.P.2.

[II] Motion for disqualification of district judge was properly denied,where affidavit. was not that of the party to proceeding..that affidavit was made by party's counsel of record didn't satisfy satutory requirement,Giebe v.Pence,C.A.9(Hawaii) 1970,431 F.2d 142. [III]"Where motion was made...district judge to recuse himself was supported by affidavit of one of the attorneys rather than by affidavit of'party",motion was insufficient U.S.ex rel. Wilson v.Coughlin,C.A.7(Ill)1973,472 F.2d. 100.

[IV] Trial judge would determine whether recusal was appropriate under section 455 of this title requiring a judge to disqualify himself in any proceeding in which his impartiality might be reasonably questioned,and hearing would be held to consider additional evidence in support of or in opposition to recusal motions. U.S.v.State of Ala., D.C. Ala.1983,571 F.Supp.958,suppl. 574 F.Supp.762,affirmed 762 F.2d.1021.

Hence,judge Block is required either to hold a hearing on recusal motion as required under 28 U.S.C.§ 455 just cited above,and as requested by Mr.Rohan Harrison on his request to withdraw,¶¶2set for adjurnment until July 18th inst.or summarily remove hiself as judge Sterling Johnson did in 1994 Dec.as interest of justice required; and as cited on ¶ ¶ 2,3,reasons why plaintiff in those cases and issues were prejudiced,and cited on ¶ 5,under which the judge order was in violation of our U.S, Constitution Amend. I, and XIV. Since the judge had admitted that his recusal had reached the U.S.Court of Appeals Cir 2.which the judge claimed"as moot"; hence any decision made by this judge is thereby null an void as it was proceeding in violation of U.S.Law.

[V] Also as it was once held that:"Affidavit seeking disqualification of judge for biaz or prejudicial was defective in that it was not filed by 'a party' to the proceeding,but by the counsel."Paschall v.Mavone,D.C.N.Y.1978,454 F.Supp.1289.

Hence since I am the party that had been prejudiced by this judge,Block,the judge will have no reason not to recuse himself from all my cases including this one at bar.

I also disagreed with Mr. Harrison's claim that I agreed to his withdrawal; our disagreement started on the facts that I had presented to him while he was working in the same office with MR. Adjuine ;under which I was made to believe that they were partners together with Mr. Ellis. I reluctantly agreed,to the fact that he expressed that without his withdrawal that the judge will not grant or hear my motion for his recusal.

As I have said above on, if he feared filing attorney authorization or affidavit in support of my motion to defendant summary judgement and the judge recusal then it became imperative for me to file and submit my motion to such defendant motion,otherwise defendants summary judgement may then be granted had I failed to file opposition as required under Fed.Rule 56.

I also disagreed with his reluctancy because we had a binding contract for which I had paid him for his service to prosecute the case to the fullest extent of the law.
His reluctant will then constitute breach of contract which is just as serious as that of the defendant's "BREACH OF CONTRACT OF HARASSMENT AND CONSPIRACY AND MAKING IT IMPOSSIBLE FOR,ME TO WORK IN A HOSTILE ENVIRONMENTFR".
We only agreed on the fact that if the judge recuse himself,and the case go on for jury trial then he will on his own ask Mr.Ellis to represent me at the jury trial,which may satisfy our contract; as I will not expect him to be sanctioned and loose his licence to practice law,if he had received such threat, from the judge F.Block.

A.P.4.

Especially when the,Judge,F.Block had once threaten to sanction my attorney Wayne Palma; in another case: 93 CV.2228; when he appeared to try the case by the "JURY", an the Law require under U.S.Title VIII,42 USC.§ 3612; Ratified by U.S.Supreme Court as Constitutional; in compliant with the U.S.Constitution Amend. VII.

Hence the denial of "JURY TRIAL",alone made the order of both Judge Block, as well as USCA, not only prejudicial but UnConstitutional,and "Void".Especially,when he knew my mailing address in the above cited case,herein; he then knowingly never wanted to serve me the plaintiff.

Hence his presume Judgement is rendered "VOID", Pursuant to Fed.Rule 60 (b) 6; and equally under 28 USC. 1655,his presumed Judgement/Order is "VOID". As it will be recited on P.10, bellow.

IN CONCLUSION:Based on the above cited cases as in civil cases,the only motion that I,as the plaintiff /party to an action that is prejudiced,which I can sign is the one that meet my expected requirement as settled by law.

Dated this 8th day of July 1997.

SYLVESTER O.ABIDEKUN.

P.O.BOX 210378
BROOKLYN,NY.11221-0378

C.C. Ms. EVELYN JONAS,
130 LIVINGSTON Street
BROOKLYN,NY.11201.

As stated above herein July 1997 When Mr. Rohan Harrison, refused to file answer upon defendant, "Summary Judgement",A three Page, which I as plaintiff consider to be a "Fraud"; of April 1997. Had I as plaintiff, the one to be injured ,if failed to file answer to his fradulent 'summary judgement'claiming that the time had been too long before, I got "Letter to Sue", from [E.E.O.C.].

She Ms. Jonas,was sugesting that the E.E.O.C.; had probably issued letter,to sue in 1987,shortly after the "[NYC.C.H.R]:NEW YORK CITY COMMISSOINER HUMAN RIGHT.]decided their case in April,25th'87 Upon the receipt of the "[NYC.C.H.R.],decision I the prepaired my Appeals to "[E.E.O.C.] on 5/12/87; just less than twenty days, of 180,days requiriment which I annexed to this Court as "Exh.[11]",where the Judge F.Block had also knew my mailing address.

Especially when Judge Sterling Johnson,who docketted this cases made an error in 1994 sent his order to 95 Wyckoff Avenue, and the mail was retuned to him he ordered that the Clerk,to mailed it to me in the correct address.

However this is the Judge Block,who had known my Mailing address from the time he was conspiratorially tranfered from Long Island,to NYC. in Feb. 27 1995, especially In Mary Immogene Basset Hospital, who ordered me to serve the defendant his order of Feb.6 1996 under which they were served three times. After this Court, denied the 92 CV.2228,which I filed in pay formart in May, 97, who connievingly, saw this Court decision and denied, ABIDEKUN V.Mary Immogene Bassete Hospital, he denied it in June 3,97,but when I filed Re-hearing in June,18, in the same pay format. served the NYC.Corp. Counsel.which was equally denied in July 97,by Crossing out june and entered July 31,'97.

As stated in our petition in that case.which,we will annexed after the defendand filed their answer as under Rule 26.1,and Rele 32.1 of this Court.

A.P.6.

As the judgement of this Court constitute "Coram Nobis" and "Judgement of error";as the relief sought under 28 USC.§ 144,is "Statutory".

Under 28,USC.§ 144; and U.S.Const.Amend I,& XIV,which read as follows:

"§ 144. Bias or prejudice of judge. "Whenever a party to'any proceeding' in a district court makes and file a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favour of any adverse party'such judge shall proceed no further therein',but another judge shall be assigned to hear such proceeding".

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On December 13,'93 the prose attorney Ms. Cecelia Volks sent a letter of the docketing case number. ANNEXED as "[A]".In [APPD A.] Pursuant to Rules 26/32.1 of this Court.

Plaintiff's Motion to defendant's Summary Judgement was Annexed "[AI]"
Will be reproduced in it entirity;Pursuant to Rule 26.1,2 & 3;& Rule 32.1 of this Court.
Without any service by the District Court presumed judgement/Order,how did USCA, expect me as plaintiff to challenge his judgement.

However, when I went to USCA,after the chief Judge, Ralph Winter recalled the case back from this U.S.Supreme Court;in June,'99.
Presumably upon an intervention/contact, by cir,2, Justice Ruth Bader Ginsburg,which I asked her to stay all lower court, proceedings, on 98-7168; when this case,then came in was the reason why it was called back and redocketted as 98-9566. Different from 98-3099,Mandamus.

Still the Judge did not serve me,the plaintiff; even when I went to USCA,to see what motion "[AI]",that was filed in response to defendant's attorney summary "Judgement Motion," [Ms.Jonas], such motion had been dismantled to pieces.Which I had to go to replace that motion,with the one that I,had sent to this U.S.Supreme Court,in April,'99.

After replacing that motion, I then had to look for illegal/UnConstitutional Order, which he never served me,with the little Quarters left in my pocket I,then had to make some copies of his "Judgement Order."
When I came back the following day,to make the remaining copies,of his order, the USCA, Clerk then told me the package,had been taken upstairs and is no more available.

The judges judgement of USCA as well as judge F.Block is void under Rule 60(b) 6,

These were equally cited on the annexed,as stated above.
In essence judge F.Block's Order denied plaintiff's'Jury Trial Motion'was unconstitutional proceeding/Order and is void. Plaintiff's Motion for jury trial,and E.E.O.C.Letter,including,Ms. Jonas motion to the district Court all showed plaintiff mailing address,and judge F.Block knownly intended not to serve plaintiff,and that was a legal and Constitutional prohibition and void.

Hence the USCA,Docketed this case as Mandamus,but is 'Appeal,as of Rights.Hence USCA Summary Order not hearing plaintiff Violate U.S.Const.XIV.
Further to the motion filed with this Cir. Court on Nov.18 1998.

With the attached motion to District Court judge,for jury trial,having waited over a month under which non of the file had been forwarded,to this Cir. Court of Appeals. Since it will be virtually impossible to appeal a judge disqualification without some of the record,
Plaintiff will therefore present some of the issues which judge Block had pervertly deleted/oblitrated that should have appeared on 'Docket Sheet Entery'

The only thing to do then is to re-present some of the cogent exhibit to proof plaintiff's points that needed present to the jury at trial.

At the beginning of this Suit after obtaining letter to sue from E.E.O.C.,on about Nov.12, '93;and the suit was filed with U.S.District Court on Dec. 6, 1993; demanded 'Jury Trial', After the Court review the claim for four days it was docketted, and served upon defendant by U.S.Marshall. By Judge Sterling Johnson.

This is statutorily mandated; and it says what it meant as enacted and this USCA,Court lacks jurisdiction to overule the legislative enactment and signed by the U.S.president that had never been declared un-constitutional. Hence the judge should be recused,as such demand had been made to him on at least three occassions.

(i) On Feb.27,1996, that was also communicated to this Court on March 15th 1996;when the same judge fixed our cases; 94 CV. 4308 under which this court knew that he failed to serve us the plaintiffs which was not an error but plainly planned not to serve the plaintiff;otherwise he could had vacated such judgement and permit us to file appeal under Fed.Rule of appellate Proceedure Rule:4(a)(6), of this Court.

But was prejudicially denied by this Court after pointing out that the prior judge,S.Johnson made such error sent letter to a wrong address after realising his error later re-order the clerk to send the letter to the correct address. Judge Block if he had not intentionally fixed our case could had done the same.

Since this Court had listed those prior cases on the docket of this case hence this Court had access,to the prejudicial claim that is not"Speculative but Real";contrary to the Citation by this Court erroneous judgement/order;(see annex,"A"

(ii)

When a motion for rehearing and was filed with this Court on 93,CV. 2228 that this Court wrongly infirred here in this recusal motion and to vacated that illegal judges order which this court sent a copy to him,judge F. Block for his recusal, he simply said this court had denied the motion for recusal and that it was moot.(annexed "BII".

(iii)

Attorney affirmation confirming not only prejudice but inimical to plaintiff is also herein annexed that confirmed judge F.Block's transgression. as annex ("C"). Attorney Wayne Palma's letter speaks for itself; under which he said: "The court appears not to be friendly towards you. In light of my observation, I advice you to be selective with the law suits you bring before the court".

In the same case that two judges;Siften & S.Johnson had revied 74,days

It is therefore in-comprehensible to see how a single judge will overrule what two judges had reviewed for more than Sevety four days and determined that it can not be said to be frevolous and issued order to proceed in forma pauperis, except judge Block had an inherent prejudice that he express in writing that then was in violation of our constitutional right to be heard, and to seek redress through legal means.

The order that judge Block issued prohibiting us from seeking redress through legal means is a "CONSTITUTIONAL QUESTION";that this Court of appeals is called upon to stay,as judge Block exceeded his constitutional authority;as such similar lesser case had been determined that plaintiff had cited on p.4, of the writ on BODDIE V. CONNECTICUT, 401 U.S.371, and will not be repeated here,and as that had case had implicated U.S.Const. Amend. I & XIV.

U.S.CONST. AMEND ONE [I].
"CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION,OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS,OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO 'PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES'."

The above quoted words especially,the apostophize clause that is applicable herein that the order of judge Block violated in which this Court is called upon to stay is a constitutional question; which also supass the federal statutes, that call for judge Block's recusal.

Hence this Court had to do what the constitution call upon this court to do and it is mandatory. Under 28 USC.§ 455(a) also. Once this is a constitution question it is incumbent on this Court to stay judge Block illegal order under which a single judge of this court can do;and verily indeed I call upon Hon. Edward Lumbard or James,OAks who streneously decented in the IN RE DREXEL BURNHAM LAMBARERT INC.

Cited in this case to overule the order of this court that failed woefully to redress the constitutional question and federal mandated statute cited herein that had been settled by the U.S.Supreme Court.

In JOHN A LILJEBERG, V. HEALTH SERVICES ACQUISITION CORP.cites as 108 S. Ct. 2194; 486 U.S.847 the U.S.Supreme Court affirmed the U.S.Court of Appeals for the fifth Cir.and held:
"Conclusion that fedral judge should have known disqualifying facts held sufficient to disqualify judge, under 28 USCS,§ 455(a),and § 144 as both applicable here.] on ground that judge's impartiality might reasonably have been questioned."

As herein judge Block's partiality is not only question but had been demonstrated and documented including illegal order dismissing and fixing plaintiff's cases at least four, which this court knew and listed in this case. In essence the citation of this Court does not bear Supreme Court and other cir. court of appeal's decision on similar cases.

IN CONCLUSION: Plaintiff call upon the chief judge of this Cir./ Hon Jon O NEWMAN to select two other judge if need be with judge LUMBARD to reverse the decision of this Court.

As stated on on p.1 and 2, of counterpart of the case; 97 - 9011, which is before this court citing for this cir.2,court of appeals,when it affirmed, Robert J. Ward, Judge,and held: 'first, Adrienne's reading of the statutory language is flawed. 'Much of the trouble in statutes drafting originates in the use of "SHALL". Bryan A. Garner, A Dictionary of Modern Legal Usage 516 (1987). As Professor Garner notes, "the word'SHALL' ordinarily connotes language of command". At p.10, ADRIENNE M. LEFKOWITZ, -against- ARCADIA TRADING CO. LTD. ET.AL. Docket No. 92 -9030 Decided JUN 22 1993.

PIONT I.
@@@@@@@@

If the "word shall" is a legal command in the drafting of ["ERISA"] with the ("REA"]; should the same "word shall", as it is in 28 [USCA.][144], be a command upon U.S. District Court, FREDERIC BLOCK, "shall proceed no further", as cited on p. 2, of my 'Rehearing',just denied by this Court

ARGUMENT I.
@@@@@@@@@@@

If this court upheld the U.S.Statutes cited above comparable to this statute for which this court is called to uphold herein,will it not be prejudicial to indigent class prose plaintiff in violation of due process clause of the U.S.Constitution Amend. I, and XIV,as the lower court faiuled to comply with the commands invoked herein .

Surely as it is,this court should reverse itself and "RECUSE" the lower court judge,in compliace with the requirement of the U.S.Constitution,and as law invoked requires.

ARGUMENT II.

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If it takes just a single 'MOTION OF MANDAMUS', that was referred to be filed with this court in Jan 1995 for the lower court judge, Sterling Johnson to adjucate the case pending before him,for over two years; the 'Habeas Corpus' "92 CV.5710, and under which this court granted the 'Mandamus'for limited time,then and ordered that the motion be renewed giving the lower court 60 day to adjucate the case: which he did step down and then was replaced by the present judge that was much more prejudicial and even enemical, dismissed all plaintiffs cases,including the[92 cv.5710,for which appointment of attorney was sought,in violation of U.S.Const. Amend. VI & XIV. Under what clause of law should this court then refused to issue such 'Order' as legally sought and mandatory herein ?

If it was right for this court to issue 'order' then for that judge to recuse himself' then it must also be right for this court to issue the same order as mandatory for the present judge to remove himself as the U.S.Statute cited herein call for.
A prior Assist. attorney for NYC.Corp.Counsel

OR

In the alternative this Court should 'CERTIFY' this pursuant to 'Local Rule, 27 (e) TO THE U.S.Supreme Court, under 28 U.S.C.§1292(b).As to whether an indigent class pro-se plaintiff is proscribed from enjoying the due process clause under the U.S.Const. Amend.I, VII, XIV, & the U.S.Statute under § 812 of 1964,Civil Right legislation, as U.S.Const. Amend.,VII,requires as well as 28 USC.§144;§ 455(a) at issue herein cited.Also as to whether this cir. court of Appeals is required by law to comply with such law to recuse the lower court judge as cited and argued above.

In CURTIS V. LOETHER ET AL., 415 U.S. 189; where the U..Supreme Court, affirmed the 'SEVENTH CIRCUIT COURT OF APPEALS' reversing the U.S.District Court and held: "The Seventh Amendment of the U.S. Constitution entitles either party to demand a jury trial in an action for damages in federal courts under § 812 of the'Civil Right Act of 1968', which authorized private plaintiffs to bring civil actions to redress

violations of the 'ACT"s fair housing provision".["FAIR HOUSING ACTS TITLE VIII] is equally as important as ["EQUAL EMPLOYMENT ACT OF 1964, TITLE VII.] in which jury trial had been requiredly applied. As I an indigent plaintiff, under which "E.E.O.C.", letter contained the provision for requesting an appointment of attorney from federal district court judge which I had sought from lower court,in this case and others cases pursuant to other federal law that call for appointment of attorney for jury trial.

ARGUMENT III.
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If the 'SEVENTH AMENDMENT', authorizes 'JURY TRIAL' under federal statutes as ratified by U.S.Supreme Court as cited herein; it then becomes the responsibility of the second circuit court of Appeals to adopt the Constitutional Protected Rights of indigent plaintiff which this court clerk had rightfully termed as 'pro-se plaintiff',as herein settled by law which the lower court,in this case as in other plaintiff's cases,had been prejudicial and failed to comply with federal law to recuse himself as demanded. Hence the judge was prejudicial in violation of due process clause of the U.S.Constitution

ARGUMENT IV.
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"If the Constitution and the U.S. Law called for U.S.District Courts for the appointment of counsel to represent indigent class of proseplaintiff it is then incumbent upon this cir. court of Appeals to appoint appellate court attorney for indigent prose plaintif,otherwise plaintif herein will be prejudiced if the court failed to grant this motion,and without any articulate reasoning/ outright denial of this redetermination motion or 'Certification' to U.S.Supreme Court, as a second alternative as demanded herein,for the nation's highest Court to review if under the 'an indigent prose plaintiff' is entitled to equal protection clause of law in this Cir.Court of Appeal,as settled in other cir.Courts of Appeals.

IN CONCLUSION:For all of the above, this motion should be granted.

UNITED STATES COURT OF APPEALS X
FOR THE SECOND CIRCUIT
@@X

OLU S. ABIDEKUN [93 CV.5600] X
98 - 3099./98 9566
-against-
X
NEW YORK TRANSIT AUTHORITY. MOTION ON RETURN OF MOTION.
@@X

SIR,

The denial of the Rehearing,Redetermination,Vacate Order,and Appointment of Counsel Certify the Questions Presented to this Court,as argued on the motion; adjucated by the Administrative Supervising Attorney,[Beth J. Meador,Esqr.'],on about April 10,'98, as post marked,without referring it to the Court, who rendered the decision was un-constitutional under the U.S.Constitution Amend.First and Fourteen.

The Administrative Supervisors' obligation is to see that the Motion,Brief submitted to the Court is in proper form in compliance with the Rules of the Court. The decision of the court, then should be based on federal laws and constitution,if the appeals of rights ended in this Court of Appeal.

Rule 41 (a) & (b)of this Court, covers the issuance of mandate and Rehearing; and 'Stay of Mandate Pending Petition for Certiorari.
Equally the 7 days requirement only apply to seven business days, after plaintiff was personally served or seven days excluding Sat., Sunday and Public Holidays pursuant to Fed. Rule of Civ.P.Rule 6(a).

In essence the letter of this court attorney named above,inst the 7 days didnot start to run until November 13,1999.The rules of this Court had to be complied with.

I therefore call upon the chief clerk of this Court Mr.George Lange III,to over-rule this court supervisory attorney, and refer the the motion to the pannel that rendered the denial of prior motions,and address the questions presented herein,which the court attorney lack jurisdiction to rule upon a clear violation of due process clause of U.S.Constitution,Amend. I & XIV,the right to be heard.

Noting that plaintiff submitted two originals plus three copies to the Clerk's Office ,but only one original and the three copies were returned hence I will be annexing the motion to those actually returned to me,as annexed plus extra copy.

Respectifully re-submitted.

SYLVESTER OLU. ABIDEKUN.
P.O.Box 210378,
BROOKLYN NY 11221

These were equally cited on the annexed,as stated above.In essence judge F.Block's Order denied plaintiff's'Jury Trial Motion' was unconstitutional proceeding/Order and is void.

Plaintiff's Motion for jury trial,and E.E.O.C.Letter,including,Ms. Jonas motion to the district Court all showed plaintiff mailing address,and judge F.Block knownly intended not to serve plaintiff,and that such is a legal and Constitutional prohibition and void.

Hence the USCA, Docketed this case as Mandamus, buit is 'Appeal,as of Rights.Hence USCA Summary Order not hearing plaintiff U.S.Const.XIV. Is void.

Further to the motion filed with this Cir. Court on Nov.18 1998; with the attached motion to District Court judge,for jury trial,having waited over a month under which non of the file had been forwarded,to this Cir. Court of Appeals.

Since it will be virtually impossible to appeal a judge disqualification without some of the record, plaintiff will therefore present some of the issues which judge Block had pervertly deleted/oblitrated that should have appeared on 'Docket Sheet Entery'; the only thing to do then is to represent some of the cogent exhibit to proof plaintiff's points that needed present to the jury at trial.

At the beginning of this Suit after obtaining letter to sue from E.E.O.C.,on about Nov.12, '93;and the suit was filed with U.S.District Court on Dec. 6, 1993; demanded 'Jury Trial', After the Court review the claim for four days it was docketted, and served upon defendant by U.S.Marshall. On December 13,'93 the prose attorney Ms. Cecelia Volks sent a letter of the docketing case number. ANNEXED as "[A]". In [APPD A.] Pursuant to Rules 26/32.1 of this Court.

Plaintiff's Motion to defendant's Summary Judgement was Annexed "[AI]"

The judges judgement is void under Rule 60(b) 6, as follows:

POINT I UNDER FEDERAL RULE OF CIV.P.RULE 60(b)(6)

Rule 60 RELIEF From judgement or Order

(a) Clerical Mistakes.Clerical mistakes in judgements, orders,or other parts of the record and errors therein arising from oversight or omision may be'corrected by the court at any time' of its own initiative or on the motion of 'any party and after such notice',if any, as the court orders. During the pendency of an appeal, such mistakes may be corrected before the appeal is docketted in the appellate court,and thereafter while the appeal is pending'may be corrected with leave of the appellate court'.

(b) Mistakes; Inadvertence; Excussable Neglect; Newly dicovered Evidence; Fraud, Etc. On motion and upon'such term as just',the court may relief a party or a party's legal representative from a final judgement, order,or proceeding for the following reasons:(1) Mistakes, inadvertence, surprise, or excusable neglect;(2) Newly discovered evidence which by due deligence could not have been discovered in time to move for 'a new trial' under Rule (Rule 59)';

(3)Fraud (whether heretofore denominated intrinsic or extrincic),misrepresentation,or 'orther misconduct of an adverse party' (4)'the judgement is void'; *****

(5) the judgement have been satisfied,released or discharged,or a prior upon which it based has been reversed or vacated,or is no longer equitable that the judgement should have prospective application;or

"(6) any other reasons justifying relief from the operation of the judgement'The motion shall be made within a reasonable time'",and for **reasons,(1),(2), and(3) "not more than one year", after the judgement order, or proceeding,or grant relief to 'a defendant,not actually personally notified' [This should be substituted for plaintiffs,as herein never,served]'; as provided in title 28, usc.§ 1655 or to 'set aside a judgement for"fraud" upon the court".

BEST AVAILABLE COPY

Rule 14.1(g). @=========>

This case began in 1983 after I was fired un-justfiably by the defendant NYC.Transit Authority; Falsely claimed that I was late to work,on November 19,'82,(1**)that I was surpose to relieve a P.M.clerk at 6.45 p.m.while my actual time was 11.45 pm. As it was contained in my motion,to "Summary Judgement" of the NYC, Transit Authority;where I came 20 minutes ahead of time. Pursuant to Rule 14.1(i); of this Court.

This case was duo-filed together with Human Right Commission Of the City of New York [CCHRNY]; as well as [E.E,O,C].as annexed in,the Appendix;D,[Exh,12(a)]; in 1983.Pursuant to Rule 32.1 & (2):ofthis Court.

The defendant NYC.Transit Authority, with its own employee/Attorney, Evelyn Jonas were fabicating poor job performances;which if the evidences that I had presented in this case, to an impartial jury and, before an impartial judge; there is no way a jury can not find judgement for me the plaintiff under the law.

Hence that was what I demanded from the Judge F.Block,which he had been denying me the justice that the law requires, since he was conspiratorially transferred to D.C.[EDNY]. from Long Island Branch;to which he was confined to prevent him from adjucating any case in which NYC.& Agency is involved.

Judge F.Block who knew my mailing Address before he came to this City as the prior Assit.Corp.Counsel under Mayor Beames' Adminiatration in 1976 as annexed to all plaintiffs cases which by law 455(a)(c),was not permitted to preside these cases, that we had but when I discover that;I made my motion for him to be disquailified; first to him and then to the USCA, under which the USCA dinied the motion,cited Pillay V.I.N.S.45 F.3d.14,17(2d.Cir.)

Especially when the judge Block threatened to sanction my Attorney not only one but twice Mr. Wayne Palma; and then Mr.Harrison.

When I told the same threat to Mr. Harrison in May 4th.1997, he told me that he was not telling me lies; that I had heard it from some one else. Not only that, but this is a judge that called himself a Court denying me the right to be heard under the U.S.Const. Amend.1, and XIV, and U.S.Const. Amend VII & XIV.

" A Court"is defined as the "Law";where "Justice is done";it is often said "God is love and love is Blind".So also "Justice is Blind". "Can un-Just judgement by a judge be called A Court" ?

The answer is no ! As defined above that the "Law" is "Court".

Once "Justice is Blind",as it does not no who is "right" or "wrong"; under the law. The only thing that distinguishes rights from wrongs, are the evidents that I had presented in this case; which should be review by the jury and before an impartial judge, giving a correct instruction to the jury, that the law entitle me under the U.S.Cunst. Amend. VII.

Under 42 USC.§ 3612; § 812, which I,as plaintiffs had chosen to try this case; as annexed "[JURY TRIAL DEMANDED]". Pursuant to Rule 14.1(i),of this Court; in my reply to Evelyn Jonas'["summary judgement Motion"], "[MARKED AI]".

This law had been settled by United State Supreme Court; "in CURTIS V. LOETHER,ET AL,412 U.S.937 (1973) Certiorari granted. We Affirm."

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(**1).November 19 was the actual day that I actually relieved,Navaja,as on p.1 above. See p.5/7 of on the Fourth CAUSE OF ACTION, of my claim/suit annex. APPENDIX "[A1]".

[E]. WHETHER THE CONSPIRACY,PROSCRIBE BY UNITED STATES CONSTITUTION AMENDMENT 13 PURSUANT TO 42 USCA, § 1385(2)(3); ARE INSUBSTATIAL, WHICH USCA. KNEW OR SHOULD HAVE KNOWN TO DISQUALIFY JUDGE F.BLOCK,PURSUANT TO FED.RULE,455(a)(c).; VIOLATED SUBSTANTIAL DUE PROCESS CLAUSE OF CONST.AMEND.14,

As stated above when Judge F.Block,who never conduct any trial,but started Harrasing all the attorneys that we had pay to try this case and other plaintiffs cases; claimed that he dismissed this case, without serving me the plaintiff where he knew my mailing address,before he was transferred to all plaintiffs' cases.

The Judge F.Block's judgement was therefore "VOID" Pursuant to Fed.Rule 60(b)6;and under, Fed.Title 28 USC.§ 1655, his Judgement was a Fraud, which should be set aside,as Plaintiff/Deffendant, who was not personally notified/served.

Hence, this U.S.Supreme Court should set aside, judge F.Block's order, and disqualify him,and remand this case back to USCA, with instruction, for "JURY TRIAL", by another unbiazed District Court, Judge.

As I had annexed the letter of Attorney Harrison that "he would [appoint another attorney,for me if the Title VII, Call for [JURY TRIAL]".

IN which I had cited two cases;in my Letter/Motion to "Justice Steven", for delay for sixty days:in that I had ordered judge Block's decision,which he never served me in this case;which I had Order from NATIONAL Archive from Kansa City.

(1). In USCA,by Senior cir,2,Judge James Oaks. who held:"On Title VII,Employment dicrimination, under E.E.O.P.Following a pre-investigation agency determination that a discrimination is untimely, an unappealed final Equal Employment Opportunity Commission ruling that the filing was timely,was binding on the parties and the court in a latter related Title VII action."

"Thus,a District Court improperly determined on its own, that an employee 's desperate treatment and hostile work enviroment were untimely -- Briones V.Runyon,[C.A.2,], No.96-6033, Dec.2, 1996 James L.Oakes,Senior Cir.Judge 1996,WL.685646." [WEST FED. CASE.]

(2)."There is no 'futility' exception to Title VII's exhaustion requirement. Accordingly the Title VII claimes of plaintiffs who did not exhaust their Administrative remedies would be dismissed -- Murphy V.West (D.Md.) Civ..A.No.AMD. 953777, Nov.13,1996,Andre M. Davis,District Judge, 1996 WL 676774.

This motion was filed in AUGUST 11,'98 with my name and address inserted at the buttom;equaly served upon the Court as well as the defendant's attorney: Evelyn Jonas and served on my Attorney Rohan Harrison; which Plaintiff will annex as in APPD. "[F]" Pursuant to Rule 32.1, of this Court.

After,sixty days that I had not heard from,Judge Block, I then called Mr Harrison to find out if he heard any thin from the Court, as to which he answered that he did not. He then advised me to file "Mandamus".

However before doing that I went to the Clerk's Office at District Court to find out what was going on; on October 13, and demand the Clerk,to print out for me all the Docket of our Suit/Claims which was done.

In application to this USCA,after filing Notice, of appeals at the District Court Clerk's office in Oct. 15, after discovered of judge Block's fraudulent entery on the 'Docket Entery' denying 'Motion,for Jury Trial', filed and served the defendant's attorney, Evelyn Jones, receipted with my correct Mailing Address on the motion;such proved fraud on the part of judge F.Block, who had known my address since June 1995. Especially in ABIDEKUN V. Mary Imogene Bassett Hospital, 95 CV.4305.

I cited before USCA, that such scheme was contrary to U.S.Const. Amend I, VII and XIV, Rights to be heard by the Jury and to appeal unfavourable decision of a prejudicial judge. That the judge's order denying the motion was equally void under Fed.Rule 60(b) 3,4/6;as recited above and as plaintiff was not served as provided in Title 28 U.S.C.,§ 1655,and for USCA, to set aside the lower court fraudulent judgement.

That Service of summons/[decision] or filing of waiver is only effective to establish jurisdiction over the person of defendant/plaintiff.

The issues presented herein are (a)the right to be heard by unbiaz judge and impartial jury pursuant to Art. III, of U.S. Constitution Amend. VII & XIV, as legislatively enacted pursuant to 28 USC. §144, § 455; and § 812.

(b). The right of plaintiff access to Federal Court, as USCA, had cited U.S.Supreme Court in BOUNDS ET AL,V.SMITH ET AL,430 U.S.817.

Equally that U.S.Supreme Court had held: "Under Jud.Code, §274b,supra, whether a review is sought by writ of error,or appeal, the appellate court has full power to render such judgement upon the record as,'law and justice' require, at p.245,
IN LIBERTY OIL CO,V.CONDON BANK,260 U.S.235.

In which I find out the Judge had just denied "JURY TRIAL",on this case and also 94 CV.4308that I had filed under Rule 60(b) 6;on Sept. 28. '98. I then filed Notice of appeal,with our mail Box Address therein,on Oct. 13,Then Judge Block lied/denied that he never saw,the rule 60(b) 6; on 94 CV.4308 which was then a fraud. Equally on this case,93 CV,5600; docketed aa 98-3099; by USCA,Clerk,Judge Block did'nt provide the District Court file,I file mymotion,in January 1999,and asked the USCA,to appoint attorney to help me to argue my,claim or reverse judge Block's unserved Order,as his judgement denying me the "JURY TRIAL",was "Void".In which he never served me the plaintiff, as cited on p.12 above under;Rule 60(b) 6.

After several motions were filed at USCA, from, Jan. untit March,23rd. which was denied by USCA,Cir,2, which I had to Appeal to,U.S. Supreme Court in April,'99. But was recalled by Chief judge Ralph Winter, and re-docketed as 98-9566. In June '99.

JURISDICTION OF United States Supreme Court,pursuant to 42 USC.§ 1981; 42 USC,§ 1983;§ 1985(2)(3);& 28 USC,§ 144; § 455; § 1343;
§ 1253; § 1254; § 1651; § 4308(3):Extra-[Ordinary Statutes].

JURISDICTIONAL STATUTES:28 USC § 1253; §1254; Court of Appeals; certiorary;certified questions Cases in the court of appeals may be reviewed by U.S.Supreme Court by,the following methods:

(1) By writ of certiorari granted upon,the petition of any partiy to any civil or criminal case, before or after redention of judgement or decree.

As the rules recited above on p.12 herein in partinent parts with single double quotation marks applicable in this case holding:"(2),the judgement is void", I move the court to conduct jury trial as the law requires and demanded; judge F.Block claiming by proxy,in 'Docket Sheet Entery',as stipulated under rule 60(b) 6,as fraud on the part of the court is equally void.

[II].

In addition to plaintiff's Motion in response to defendant's summary judgement. It was settled by the Cir.10,Court of Appeals held in DART V. SHELL OIL CO.Cites as 539 F.2d. 1256, where it was held:
".A time limitation for filing a civil action after receiving'a right to sue notice', from E.E.O.C.; is'a statutes of limitation' ,at 260.
It was equally ratified by U.S.Supreme Court, when in comparison in IDEA, where compared with letter from Labor Relation, as government agency analogous to E.E.O.C.,as statutes of limitation. In 434 U.S.99. This is in addition to those cited cases in plaintiff's reply to defendant's summary judgement motion. [Eventhough motion "[A]",annexed to USCA,will not be annexed to this Court and "[AI]",priviously annexed.

For all practical purpose Judge F.Block prezumed order is void Judge Block's citation in his 'denial illegal order' "(2d.)" for his disquilification, which he recently responded to on; 93 CV. 2228,was not only banckrupt but equally a fraud.He ill-cited U.S.Supreme Court
in U.S.V. CHRIS W.BEGGERLY et al, 118 Sup.Ct. 1862 (1998).Such was an irrelivant citation, under which U.S.Supreme Court,chief justice Rehnquist reversed the cir.5,Court of Appeals held:

"(1) equitable tolling not available in a suit brought pursuant to 'Quiet Title Act' (QTA). Reversed.

In the unanimous decision under which Justice Stevens filed a concouring openion, joined by Justice Soutter and held:

@@******* 2641, 2651.1

"An independent action for relief from judgement is available only to 'prevent a grave miscarriage of justice'". Fed.Rules

Civ.Procedure. Rule 60(b), 28 U.S.C.A. Equaly cited above,p.2.

Though plaintiff expected this Citation before USCA, settle this case and all others; but the court was moot just issuing summary orders witout any finding of fact and conclusion of law.

Plaintiff then knew their was confilct of interest because judge F.Block's allies prohibit plaintiff's 'Interest of Justice; that can only be kept open by this Court as this Court espoused in United States V. OHIO POWER CO.353 U.S.98,.The same 'Intrest of Justice',was enunciated by this Court as cited above, in LIBERTY OIL CO.V. CONDON BANK,260 U.S.235, Hence, this case should be remanded back to lower court for jury trial by another judge.The only thing plaintiff can do is to present Federal questions and stress it before lower federal Court district,and for it to be accepted or rejected.

As this Court equally in PARKER V.GRIMSBY 82 Oct.Term,1890 where it was held: "By an act of Congress approved Feb.25, 1889,it was provided that in all cases where a final judgement or decree shall be rendered in Cir. Court of the U.S.in which there shall have been a question involving the jurisdiction of that court, the party against whom the judgement or decree is rendered

shall be entitled to an appeal or writ of error to the Supreme Court of the UNITED States,to review the judgement or decree without reference to its amount;"

Hence this is the 'summary order/decree'of judge F.Block,without; hearing plaintiff, granted defendant's summary judgement motion,is better review by this USCA,and should be remanded settled herein.
This Court should then vacate the judge Block's order and remand for "Jury Trial by another Judge;as the law and Constitution' requires.

(ii). Disqualification of judge F.Block, as settled by Cir.5,Court;and ratified by this Court in LILJEBERG V. HEALTH SERVICES ACQUISITION CORP.486 U.S.847. Under which district court judge Collins was disqualified and the one replaced him that ratified his judgement was equally reversed and appeals was taken to this Court.As stated above.

According to an "ENGLISH ADDAGE", that"what is good for the goose is also good for the gander". Hence the 'interest justice' that is good for the United States is equally good for plaintiff.

Equally Judge Block seems to cite U.S.Supreme Court in HAINES V. KERNER,ET,AL. 404 U.S.519,(1971).in 93 CV.2228. Where the Court reversed per curiam, held: "Prisoner's pro-se complaint seeking to recover damages for the claimed physical injuries and deprevation rights in imposing disciplinary confinement should not have been dismssed without affording him the opportunity to present evedence on his claim." 427 F.2d 71. reversed and remanded.

This USCA, should grant this motion and reverse per curiam the same way the Supreme Court did in judge Block cited cases herein.

The USCA, knew what Judge F.Block has been doing was illegal,but had kept silent all the times;which in itself 'discriminatory and in violation of the Due Process Clause of Fourteenth Amendment'.

When plaintiff challenged the unserved, illegal order of judge Block after discovery on the'Docket Record Sheet Printout', by prose Clerk; it was argued on motion that USCA, should consider that answer of judge F.Block, to plaintiff's last motion dated August 11,'98 filed with clerk of the court and served upon the defendant at 3:22,the same day be considered as the last plaintiff's motion, for which judgement/order was issued and unserved and void as cited above

Equally that USCA,should consider the day, in which the 'Docket Sheet'was printed out on October,13th '98, and for which appeal's 'Notice'was filed on October 15,'98,then meet USCA,[FRAP] Rule 4a(1).as for jurisdiction purpose.

Also even-if USCA,misconstrue the prior judge F.Block denial order, that was unserved dated June 17,'98,and void; that such date was still less than 180 days,that USCA, 'Jurisdiction', will still be under "[FRAP] Rule 4 a(6).

In challenging Judge F.Block's 'illegal schemes' plaintiff pointed out the inconsistencies where judge Block's entery on the docket sheet No: 35, entery date on 8/26/98;the motion demand for jury trial that was different from No: 36 entrey dated 8/21/98; denial for jury trial Order, as a fraud that a Court can not consistently, denied,a motion four days in advance before he entered such a motion,hence such 'scheme' was a fraud and void.

That Motion was Annexed as "[Ai]".
Pursuant to Rules 26.1 & 4;and Rule 32.of this Court. Will be entirely recited,

Equally,In employment discrimination,title VII, IN District Court, S.D.N.Y.
Cruz LOPEZ,Plaintive-Appellant V.s.b. thomas, INC. No 1017, Doct. 86-7920. Cites as, 831 F.2d.1184 (2nd Cir.1987)
Where former employee,brought action against employer under § 1981, alleging discriminaton
Whitman Knapp,J, granted employer's motion for Summary Judgement, and employee appealed. The Court of Appeals, Cardamone, Cir, Judge held that (1) former employee established prima facie case of racially discriminatory constructive discharge under § 1981;

(2) evedence that employee was subject to harassing incidents was insufficient to establish racialiy hostile working environment and(3)state workers' compensation statutes did not bar employee's claim for emmotional distress under § 1981.
Affirmed in part, reversed in part and remanded. We had here in this case where, defendants had,conspiratorily fabricated poor jod performances as a pretence to terminate my employment,by harassent. Especially during deposition,we had the defendant's attorney Ms.Jonas,Showed violations when two criminals,as Mr.Harrison, termed it,deposining Ms.Macknally,what would she do when such criminals walked through Turnstiles,[which Ms Jonas said he shouldn't called them criminal,drew a sharp argument], In which she reply;said pay your fairs !
The same thing that I did, in which they gave me two cautions, that was partly intimidation, a pretence to terminate me.

On Monday June 12 2000, this U.S.Supreme Court UNanimously; held: a plaintiff can prevail,even in the absence "smoking-gun evedence of discrimination".

"That by showing an employer's innocent-sounding explanation for his action was a lie." However as in my claims herein had presented factual evidents, which the defendant, by its attorney/employee committed fraud, in which after deposition failed to present those named in my CHARGE,Suit, that are connected/responsible for the fraudulent claims of poor job performance for deposition.

Those evidents are covered in the suit,and my Reply,to defendants "Summary Judgement", [AI].

The defendant's Attorney,Ms.Jonas, drewup, eight short sentences; which she handed to me during deposition and wanted me to say yes or no,to those sentences.
Upon thorough look, I told her that I can'nt; when I check my record the 1st. two dates,she fraudulently inserted viz: 5/19/82 was when I was still assigned to a senior Rail Road Clerk, on the job training; which she circumvented from, 6/19/82. "Where Ms.Graige Asst, Station Supervisor Audited the Booth "[B.4]", in 1982,call me foreingner."

The second date,5/29/82; was also a fraud, when she gave no station, where I worked.

They, the M.T.A.never, present any one,for deposition,as a matter of fact,the complaints are fraud which I called Ms. Jonas for Court to sanction her pursusnt to Fed.Rule 52(c).as in my Motion [AI].to her "Summary Judgement Motion'.

A copy of her perverse,claim; Exh."C": which I annexed to Justice Steven,was inluded along with my motion/letter for a "STAY",for 60 days, pursuant to Rule,22, of this Court.

Here in this case where Administrative law Judge N.Y.State Dept. of Labor,Lawrence, ROSE, "[A.L.J# 83-05040]. After conducting Trial, and defendant's employee;J A.NAVENJA. R.R.Clerk. was supoenard in 1983.

He was cross examined by my attorney [just from Law School];where it was found that I was not late,and I was present at 1140,p.m. rather than 11.45, as required, the charge of lateness was over-ruled.by [A.L.J.] That was prezumably why the defendant's attorney/employee,never wanted Jury trail,nor present any issues which I had presented in my Answer to her"Summary Judgement Motion"

Hence the reasons that she went to Judge Federick Block to conspired with him not to serve me and sanctioning me by proxy through the Clerk Robert Heinemann.,deny,me the United States Constitution Right to be heard.

This was the same order which I appealed in 1996 for the USCA,to STAY. on 92 CV.2228; just filed about two weeks ago.However before I recite judge F.Block's UnConstitutional Order, I wili have to go through Judge Block unserved and void Judgement.

SYLVESTER O. ABIDEKUN,Plaintiff,
-against- Case No.93 CV.5600.
NEW YORK TRANSIT AUTHORITY,Defendant.
@@@

Appearances:
SYLVESTER O.ABIDEKUN,
Plaintiff pro se
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For the Defendant:
MARTIN B. SCHNABEL
Vice President AND
Gen Counsel.NYC.Transit
By EVELYN JONAS,Counsel
130 Livingston Street
Brooklyn NY.11201.

BLOCK, District Judge;

Plainintiff Sylvester O.Abidekun ("Abidekun"),a black man of Nigerian national origin, alleges in 1992 because of his race and national origin, alleges that defendants N.Y.City Transit Authority terminateed his employment in 1982,because of his Race and national origin,in violation of Title VII,of the Civil Right Act of 1964,42 USC.§ 2000e,et seq, 42 USC.§ 1981 and § 1983,and Fifth,Sixth and Fourteenth Amend. of U.S.Constitution.

The Transit Authority moves for summary judgement pursuant to Rule 56 of the Fed. Rules of Civil Procedure,conntending that Abidekun's § 1981 and 1983 claimes are time-barred and his Title VII claims is barred by the equitable doctrine of latches [See,p. 16,18,and 21 above,E,E,O.C.Letter].

In the alternative,the Transit Authority mentains that it had legitimate business reasons for terminateting Abidekun,who was,a probationary employee,and there is no genuine issue of material fact to be tried. In his submissions to the Court* Abidekun request that the court recuse itself from further consideration of this case.**[Note;Judge,F. Block, is reduse to a Judge, by the language of 28 USC,§ 144; from court to a judge.as recited on A.P.4.above].

For the reasons that follows, Abidekun's motion for recusal is denied, the Transit Authority's motion is granted, and the complaint is dismissed in its entirety.

BACKGROUND: The following facts are drawn largely from the statement of material fact submitted by Transit Authority.Unless otherwise indicated,facts are undisputed. **[What facts are undisputed,? The false statement challenged by Mr.Harrison during deposition when Criminals walk through the Tunstile, in which Ms. Maknally said she would not qive such violation,as cited above.

On about Feb.28 1983, Abidekun filed an administrative complaint with [NYC.C.H.R], that he had been dismissed because of his rase and national origin. He charged that his supervisors fabricated instances of poor job performances, falsely accused him of shortchanging a customer,and treated white and native born black employees,better; fairly as they treated him.Abidekun charged of discrimination, which is equally filed

with "[E.E.O.C"]. On April 30,1987,the [CCHR] determined there was no probable cause to believe that Transit Authority had engaged in the unlawful discriminatiory practices alledged by Abidekun.

In September, 1993,Abidekun notified "EEOC" that he had never recieved a right to sue letter from the Agency. "E.E.O.C.",which,had destroy his case file,in the ten years.that had elapsed since Abidekun filed his charge of discrimination required him to submit,an affidavit attesting to that he had never recieved right to sue letter; on November,4 1993.**[See,annex,Exh.11;12(a),& 12(b)].This action,alleging intentional discrimination and hostile enviremetal place, harassment, in violation of 42 USC § 1981;and 1983, Title VII.

The Transit Authority now moved for Summary judgement;contending that § 1981*;1983 are barred by statutes of limitation. (2)The Title VII,claims are barred by laches; (3) Abidekun's Title VII,claimS are baseless.

Signed Judge F.BLOCK.

** [See § 1981 had no statutes of limitation] Discrimination against permanent Resident Alien.

See also M. GLUS,V.BROOKLYN EASTERN DISTRICT TERMINAL. 359 U.S.232.(1959) Where this Court held:

1.Court @==========> 383 (1).

The Supreme Court would grant certiorari to resolve question of whether a cause of action is under Federal employment Liabilty Act was irriparabily lost at the end of,the statutory period fixed by the Act for commencement of a suit,or whether plaintiff could mentain a suit after expiration of,the period on theory that estopel prevent defendant from relying on limitation. Federal Employers'Liability Act, §§ 51-60,56.

Limitation of Actions @=======> 13.

"Maxim that no man may take advantage of his own wrong is applied in many diverse classes of cases by both law and equity,court and frequently employed to bar inequitable reliance on statutes of limitations."

IN CELOTEX CORP. V. CATRETT,ADMISTRATRIX OF THE ESTATE OF CATRETT.
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR DISTRICT OF COLUMBIA CIRCUIT.
"The court granted the motion because their was no showing of exposure to petitioner's products,but the Court of Appeals reversed,holding that summary judgement in petitioner's fayor,was premature was precluded because of petitioner failure to support its motion with evidence tends to nagate such exposure,as required by Federal Rule of civil Proceedure 56(e) and the decision of adickes v.S.H.Kress,& Co., 398 U.S.144.
Held;(1) the Court of Appeals' position is inconsistence with the standard of summary with the standard for summary judgement,set forth in Rule 56(e),which provedes that at summary judgement is proper "if the pleadings depositions,answers to interogatories, and admissions on file, together with affidavits, if any show that their is no genuine issues as to any material facts that the moving party is entitled to a judgement as a matter of law,"

(a)The plain languge of Rule 56(c),mandates the entrey of summary judgement,after adequate,time for descovery and upon motion,against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof,at trial."

"In such a situation, there can be no genuine issue as to any material,fact," since a complete failure of proof concerning an essential element of the non moving party case necessarily renders all other facts immaterial.

The moving party is entitled,to a judgement as a matter of law" because the non moving party has failed to make,a sufficient showing on an essential elemen[t] of its case with respect to which it had,the burden of proof."

As stated in this Court cited cases above; where at the deposition I challenged the defendant, Transit Authority fraudulent,eight sentences,"[Plaintiff Exh."10c"];presentation cover above, in my Answer to Ms,Jonas Summary Judgement Motion; "[AI]"; which I will fully recited when the defendant file her own answer.[A Copy annexed with my motion,to Justice Steven for 60 days stay].Pursuant to Rule 26.1,2;and 32.1,of this Court.

The USCA, IN ITS UNSIGNED SUMMARY ORDER, as equlally covered above held:
PRESENT: Hon.Joseph M.McLaughlin,
Hon.Dennis Jacobs,
Hon.Robert D.Sack,
Circuit Judges

Dated 8, Nov.but received Mon.13,'99;a Fraud.

Sylvester O. Abidekun,
Plaintiff-Appellant,

V.

New York City Transit Authority
Defendant-Appellee

Appellant has filed, pro se,a motion for assignment of counsel,accelerated relief,to renew his application for appointment and for reconsideration. Upon the consideration,it is ORDERED that the motions are denied and appeal is dismissed because it lacks an arguable bases in fact or law, See 28 USC.§ 1915(e);Pallay V.INS.45,F.3d 14,17(2d Cir.1995)

FOR THE COURT:
Karen Greve Milton,A/C,Cler
Synged By; Lucillo Carr.

After which I,as plaintiff had cited Hodge V. POLICE Officers Collon, 802 F.2d,58 where an indigent.Allen Hodge conducted by himself a jury trial unable to succeed against the police and then loose the case, He then appealed the dicision to USCA, which was reversed by USCA.

But here I had attorney Mr Harrison who after deposition, the defendant attorney conspired with judge Block and he,Judge F.Block threathened to sanchion him, who then, had to resigned,and promised to appoi attorney to represent me at trial if the Title VII,come to Jury trial.

The only thing that I stress in my motions was, for USCA, to reversed and disqualify judge F,Block,from plaintiffs' cases. So that the cases could be tried in a legal and congenial atmosphare before an impartia judge and impartial jury and presantion of evidents.

Hence this Court should va cate the USCA, and ORDER USCA,desqualify Judge F.Block, the same way Cir.5,did on Liljeberg,V. Hea Services Aquisition corp.486 U.S.847.under the U.S.Laws cited above and remand the case to lower court for "Jury trial",as the law and Constitution requires

For all of the above,Certiorari should be granted and the defendant, Evelyn Jonas should be asked to file her own answer.

HONORABLY SUBMITTED.

Dated this July 6th,'00

SYLVESTER O,ABIDEK

BEST AVAILABLE COPY

APPENIX "C", CONSTITUTION.

UNITED STATES CONST. AMEND,ONE.

"1st AMENDMENT:Congress shall make no law respecting an establishment of religion,or prohibiting. The free excercise thereof,or abridging the freedom of speech,or of the press,or the right of the people peaceably to assemble,and to petition the Government for a redress of grievances."

UNITED STATES CONST.AMEND.FIVE:

"No Person shall be held to answer for a Capital,or otherwise Infamous Crime,Unless on a Presentation of Indictment of a Grand Jury,..Nor Shall any Person be Subject for the same Offence to be Twice put in Jeopardy of Life or Limb; . .Nor be Deprived of Life, Liberty,or Property, Without due Process of Law.."

U.S.CONST.AMEND.THIRTEEN: SLAVERY PROHIBITED.
"ENFORCEMENT SECTION I.NEITHER SLAVERY NOR INVOLUNTARY SERVITUDE EXCEPT AS A PUNISHMENT FOR A CRIME SHALL EXIST WITHIN THE UNITED STATES,OR ANY PLACE SUBJECT TO THEIR JURISDICTION."

U.S.CONST.AMEND. FOURTEEN:
"CITIZENSHIP:PRIVELEDGES AND IMMUNITIES;EQUAL PROTECTION...DUE PROCESS CLAUSE OF SECTION,I. ALL PERSONS BORN OR NATURALIZED IN THE U.S. AND SUBJECT TO THE JURISDICTION THEREOFF,ARE CITIZENS OF UNITED STATES AND OF THE STATES WHEREIN THEY RESIDE. NO STATES SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEDGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES;NOR SHALL ANY STATES DEPRIVE ANY PERSON OF LIFE,LIBERTY,OR PROPERTY, WITHOUT ANY DUE PROCESS OF LAW;NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF LAWS."

APPENDIX "C", CONTINUE.

U.S.CONST. AMEND VII,:"IN SUITS AT COMMON LAW, AT COMMON LAW, WHEN THE VALUE IN CONTROVERSY SHALL EXCEED TWENTY DOLLARS, THE RIGHT OF TRIAL BY JURY SHALL BE PRESERVED..."

APPENDIX "C"; "D" INVOLVED.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED.

The United States Const. Amend.V,VII,XIII and XIV,that engendered the Civil Right Legislation of 1866,1964 and 1991,Statutes 28 U.S.C.§1343,42 USC.§ 1983,§ 1985 are set forth in pertinent part below:

APPENDIX "D" CONTINUE.

UNITED STATES STATUTORY PROVISIONS: PURSUANT TO (i)28 U.S.C.§ 1343 CIVIL RIGHTS AND ELECTIVE FRANCHISE;The district court shall have the original jurisdiction of,any civil action authorized by law to be commenced by any person:

(1)To recover damages to his person or property,or because of the deprivation,of any right or privileges....by any"ACT",done in furtherance of any conspiracy mentione in § 1985 of title 42.

(2)To recover damages from any person who fail to prevent or to aid from preventing any wrongs mention in § 1985,of title 42 which he had knowlege were about to occur and power to prevent.

(3)To redress the deprevation,under color of any state law,statute,ordinance, regulation,custome,or usage,of any right, priviledge or immunity secured by the Const. of U.S.or any Act,of Congress,..person within the jurisdiction of the,U.S.

APPENDIX "D".CONTINUE.

CONSPIRACY: 42 U.S.C.§ 1985(2)(3);When any two or more persons in any state or Territory conspire,deter by force or intimidation or threat any party or witness in any court...or if two or more persons conspire for the purpose of impeding hindering,obstructing,in any manner...any citizen the equal protection of the laws or to injure him or his property..the,right of any person,or class of persons,to the equal protection of laws.Ku Klux Klan,Act. § 1985(3).USCA.Const.Amend.13,§2.and 14.

"E" CONTINUE.

CONSPIRACY: 42 U.S.C.§ 1985(2)(3);When any two or more persons in any state or Territory conspire,deter by force or intimidation or threat any party or witness in any court...or if two or more persons conspire for the purpose of impeding hindering,obstructing,in any manner...any citizen the equal protection of the laws or to injure him or his property..the,right of any person,or class of persons,to the equal protection of laws.Ku Klux Klan,Act. § 1985(3).USCA.Const.Amend.13,§2.and 14.

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§ 1985(3) Provides: "If two or more more persons in a tates conspire or go in disguise on the premisis of another,for the purpose of depriving, either directly or indirectly, any person or class of persons of equal protection of the laws, or equal privilege and immunities under the law;** in any case of conspiracy set forth in this section... where another is injured in his persons,or property.. may have an action for recovery of damages, occasioned by such injury or deprivation,against one or mare of the conspirators."

APPENDIX "D".STATUTES.

28 USC.§ 455(a) in pertinent part that read as follows:

"Any justice, judge, or magestrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."28 USC, §455(a),as ammended.

The underlined word/phrase "SHALL DISQUALIFY HIMSELF". had been settled by the U.S.Cir.2, Court of Appeals as,a legal command of law, citing 'Professor Garner',noted the word'shall' is a legal command; on p.10, of ADRIENNE M. LEFKOWITZ -against- ARCADIA TRADING CO. LTD ET AL. Doctet No.92 - 9030 Decided June 22 1993.

RE-CITATION OF 28 USCA.§ 144.BIAS OR PREJUDICIAL JUDGE.

"Whenever a Party to any proceeding in a District Court makes and filed a timely and sufficient affidavit that the judge before whom the matter is pending has a personal Biaz or Prejudice either against him or in favour of any adverse Party,Such Judge 'SHALL PROCEED NO FURTHER' therein and another judge shall be assigned to hear such Proceeding".

CONTINUE "D"

42 U.S.C.§ 1983:"Every person who,under color of any statute, ordinance...of any State or Territory,subjects or causes,to be subjected, any citizen uf the U.S.or other person within the jurisdiction thereof,to the deprivation of any rights,.secure by the Const.and laws shall be liable,to the party injured in an actionat law,suit in equity,or other proceeding,for redress."

APPENDIX "E"1a.

UNITED STATES DISTICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
SYLVESTER O. ABIDEKUN

93 CV 5600(SJ) ORDER

Plaintiff, -----

-against-

NEW YORK CITY TRANSIT AUTHORITY

Defendant.
----------X

APPEARANCES:

SYLVESTER O. ABIDEKUN,
959 Wyckoff Ave/P.O.Box 278,
Ridgewood/Brooklyn NY.11221-0378
Petitioner Pro se

ALBERT C. CONSEZA
General Counsel;N.Y.C.Transit Authority
370 Jay St./130 Livingston St,
Brooklyn NY.11201.

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon PLAINTIFF'S Attorney [NAMED and Address]

Pro se: Sylvester O. Abidekun
959 Wyckoff Ave./P.O.Box 210378,
Brooklyn NY.11221-0378.

an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you..If you fail to do so, judgement by default will will be taken against you for the relief demanded in the complaint.

ROBERT C.HEINEMANN. CLERK OF U.S.DISTRICT COURT, [E,D.N.Y] DEC.10 1993

CV 93 5600.

[JOHNSON,JUDGE.
[ROSS.M.]

APENDIX F 2a.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK.
@@@@@@@@@@@@@@@@@@@@@@@@@@@@@@@@@@@@
SYLVESTER O.ABIDEKUN.

Plaintiff,
JUDGMENT
-against- 93 5600(FB).
NEW YORK CITY TRANSIT AUTHORITY,
Defendant.
@@X

A memorandum and order of Hon.Frederic Block, United States District Judge, having been filed on June 8,1998, denying Abidekun's request for recussal;granting the Transit Authorirty's motion for summary judgement,as his claims under 42 U.S.C.§ 1981 and 1983 are time-barred and his Title VII claims are utterly without merit;declining to exercise suplemental jurisdiction over such New York State statutory or common law claims dismissing the complaint in its entirity; (**1.)[and barring Plaintiff from commencing further action in the United States District Court for the Eastern District of New York without the prior approval of United States Magisrates judge; it is ORDERED and ADJUDGED that Abidekun's request for recusal is denied that transit Authority's motion for summary judgement is granted;that the court declines to exercise suplemental jurisdiction;that the complaint is dismissed in its entirety; and that plaintiff may not commence any further actions in the U.S.D.Court.E.D.N.Y.]

Dated June,8 1998.(*2)Unserved,plaintiff.

(*1)[THIS IS THE UNCONSTITUTIONAL ORDER,OF JUDGE F.Block which I appealed in 93 CV,2228, for the USCA, TO DISQUALIFY JUDGE BLOCK,From our cases;as an attorney to the deffendants; NYC.as a former Corp.counsel, in which the USCA,issued"Summary Judgement Order","Not,for Publication".As on appendix 15/16 and 17/18; of the now USCA. 99-7018. SEE APD "E",herein. Re-docketed from 98-3099;to 98-9566 USCA.]

S/. ROBERT C HEINNMAN. Clerk Of Court.